IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
FAMILY COURT APPEAL NO.46 OF 2005

Sudhir L. Rajadhyaksha,
Aged 50 years, Occ: Service,
residing at C-3/13, Nau Sanrakshan Co-operative Housing Society Ltd.,
Navy Colony, Malad (West),
Mumbai-400 064. .... Appellant

- Versus -

Smt. Vishakha S. Rajadhyaksha,
Aged 45 years, Occ: Service,
residing at A-3, Sai Prasanna Co-operative Housing Society Ltd.,
Jawahar Nagar, Plot No.354,
Road No.19, Goregaon (West), Mumbai. .... Respondent

Shri P.G. Karande for the Appellant.

Shri Hakeem Salim for the Respondent.

CORAM: R.M.S. KHANDEPARKAR &
ANOOP V. MOHTA, JJ.

DATED: JUNE 15, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. This appeal arises from the judgment and order dated 20-1-2005 passed by the Family Court, Mumbai in Petition No.C-241 of 2001. By the impugned judgment the Family Court has directed the payment of maintenance to the extent of Rs.2,500/- per month to the respondent and Rs.1,500/- per month to the daughter Shraddha.

2. While challenging the impugned order the learned Advocate for the appellant submitted that the Family

Court did not give credit to the various deductions which are to be made from the gross salary of the appellant and ignoring the same, fixed exorbitant maintenance to be paid to the respondent and the daughter.

3. Bare perusal of para 9 of the impugned judgment clearly discloses that the Family Court has considered each piece of relevant evidence which are required to be considered for the purpose of fixing the maintenance amount to be paid to the wife and children. The para 9 of the impugned judgment reads thus:-

> "9. The Respondent is an able-bodied person having service with Navy. His recent salary record is produced by his employer with letter, Exh.25. On a perusal of the said record, it transpires that in the month of October 2004, his gross salary was shown as Rs.13,144/- and his net salary is shown as Rs.7,414/-. In the deduction column, a sum of Rs.5,700/- is shown towards .P.F. Rs.500/- towards house rent, Rs.30/- towards income tax surcharge, Rs.5/- towards FA/BA Advance and Rs.100/- towards leave adjustment. While ascertaining the maintenance

allowance, one is required to consider only the compulsory deductions. A perusal of the salary record would indicate that major deduction is towards provident fund to the tune of Rs.5,700/- per month and a permanent employee is expected to deduct a minimum of 10 per cent of the basic towards provident fund and beyond that, it is the voluntary contribution. Therefore, it cannot be said that total amount of Rs.5,700/- is compulsory deduction. His basic pay for the month of October is shown as Rs.5,900/-. According to the recent Government Resolution, 50 per cent of the dearness allowance is also to be taken into account as basic pay for certain purpose only. Even if we consider that amount, it is shown as Rs.2,950/-. The total basic pay comes to Rs.8,850/-. Therefore, compulsory deduction towards provident fund would be hardly Rs.900/- per month. All the amounts above Rs.900/- will have to be taken as voluntary deductions which the Respondent is always entitled to reduce. Even assuming his net salary, I am of the opinion that from the amount of

around Rs.7,500/- he can spare the total amount of Rs.4,000/- as prayed for by the Petitioner because 1/3rd of the net salary can be retained by the Respondent for his expenses and remaining 2/3rd can be given to the Petitioner and her daughter. Apart from the salary, it seems that he also gets certain perks as can be gathered from Exh.27 which indicates that he has got bonus of Rs.2,467/- for the year 2003-2004. Since he is serving with Navy, he also gets consumer goods at concessional rates. That advantage is not available for the Petitioner and her daughter. Therefore, when comparison is made between the Respondent on one hand and the Petitioner and her daughter on the other hand, I find that the Respondent is placed in a more comfortable position even after direction to pay Rs.4,000/- per month as prayed for by the Petitioner. As a result, I am inclined to award Rs.1,500/- per month for the daughter which she is already getting by way of interim maintenance and remaining Rs.2,500/- per month for the Petitioner. I have quantified this amount

considering the present cost of living. This much amount is required to meet the day to day expenses of bare necessities like food, clothing and shelter."

The grievance of the appellant regarding deductions and the refusal to give credit to those deductions relates to the deduction pertaining to the G.P.F. amount. The total salary of the appellant, undisputedly, is above Rs.13,000/-. Being an employee in the Naval establishment, applying the law applicable to him, he has compulsorily to deduct 10% of the basic towards the G.P.F.. The 10% of Rs.13,000/- would be Rs.1,300/-. The appellant, however, claims deduction of Rs.5,700/- towards the G.P.F. amount. Certainly, that cannot be said to be a compulsory deduction and therefore no fault can be found with the impugned order refusing to give credit to an amount over and above Rs.1,300/- towards the deduction on account of G.P.F. from the gross salary. That being the only grievance made regarding the fixation of the maintenance to the respondent, we do not find any case being made out for interference in the impugned order. The Court below has taken into consideration the various deductions and has correctly arrived at the figure of Rs.2,500/- per month to be the maintenance charges for the wife. Needless to say, that this observation is in relation to the assessment of the liability towards the maintenance in the facts and

circumstances disclosed at the time of disposal of the application. Nothing prevents the parties from approaching the Family Court to get the maintenance amount modified if the circumstances prevailing subsequent to the passing of the order warrants so.

4. With these observations, as we do not find any case for interference in the impugned judgment, the appeal fails and therefore is hereby dismissed with no order as to costs.

(R.M.S. Khandeparkar, J.)

(Anoop V. Mohta, J.)